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SENATE BILL 269

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO SLEEP THERAPY; CREATING THE POLYSOMNOGRAPHY PRACTICE ACT; PROVIDING FOR LICENSING; CREATING THE POLYSOMNOGRAPHY PRACTICE BOARD; CREATING THE POLYSOMNOGRAPHY FUND; ENACTING CRIMINAL AND CIVIL PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Polysomnography Practice Act".

Section 2. DEFINITIONS.--As used in the Polysomnography Practice Act:

A. "board" means the polysomnography practice board;

B. "department" means the regulation and licensing department;

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1 C. "direct supervision" means that the
2 polysomnographic technologist providing supervision shall be
3 present in the area where the polysomnographic procedure is
4 being performed and immediately available to furnish assistance
5 and direction throughout the performance of the procedure;

6 D. "fund" means the polysomnography fund;

7 E. "general supervision" means that the
8 polysomnographic procedure is provided under a physician's
9 overall direction and control, but the physician's presence is
10 not required during the performance of the procedure;

11 F. "license" means an authorization issued by the
12 board that permits a person to engage in the practice of
13 polysomnography in the state;

14 G. "licensee" means a person licensed by the board
15 to engage in the practice of polysomnography;

16 H. "polysomnographic student" means a person who is
17 enrolled in an educational program that is accredited by the
18 commission on accreditation of allied health education
19 programs, as provided in Section 4 of the Polysomnography
20 Practice Act, and who may provide sleep-related services under
21 the direct supervision of a polysomnographic technologist as a
22 part of the person's educational program;

23 I. "polysomnographic technician" means a person who
24 has graduated from an accredited educational program described
25 in Section 4 of the Polysomnography Practice Act but has not

1 yet passed the national certifying examination given by the
2 board of registered polysomnographic technologists, who has
3 obtained a temporary permit from the board and who may provide
4 sleep-related services under the general supervision of a
5 licensed physician;

6 J. "polysomnographic technologist" means a person
7 who is credentialed by the board of registered polysomnographic
8 technologists and is licensed by the board to engage in the
9 practice of polysomnography under the general supervision of a
10 licensed physician;

11 K. "polysomnographic trainee" means a person who is
12 enrolled in an accredited sleep technologist educational
13 program that is accredited by the American academy of sleep
14 medicine and who may provide sleep-related services under the
15 direct supervision of a polysomnographic technologist as a part
16 of the person's educational program;

17 L. "practice of polysomnography" means the
18 performance of diagnostic and therapeutic tasks, under the
19 general supervision of a licensed physician, including:

20 (1) monitoring and recording physiologic
21 activity and data during the evaluation or treatment of
22 sleep-related disorders, including sleep-related respiratory
23 disturbances, by applying appropriate techniques, equipment and
24 procedures, including:

25 (a) continuous or bi-level positive

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1 airway pressure titration on patients using a nasal or oral or
2 a nasal and oral mask or appliance that does not extend into
3 the trachea or attach to an artificial airway, including the
4 fitting and selection of a mask or appliance and the selection
5 and implementation of treatment settings;

6 (b) supplemental low-flow oxygen therapy
7 that is less than ten liters per minute using nasal cannula or
8 continuous or bi-level positive airway pressure during a
9 polysomnogram;

10 (c) capnography during a polysomnogram;

11 (d) cardiopulmonary resuscitation;

12 (e) pulse oximetry;

13 (f) gastroesophageal pH monitoring;

14 (g) esophageal pressure monitoring;

15 (h) sleep staging, including surface
16 electroencephalography, surface electrooculography and surface
17 submental electromyography;

18 (i) surface electromyography;

19 (j) electrocardiography;

20 (k) respiratory effort monitoring,
21 including thoracic and abdominal movement;

22 (l) respiratory plethysmography;

23 (m) arterial tonometry and additional
24 measures of autonomic nervous system tone;

25 (n) snore monitoring;

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- 1 (o) audio or video monitoring;
2 (p) body movement monitoring;
3 (q) nocturnal penile tumescence
4 monitoring;
5 (r) nasal and oral airflow monitoring;
6 (s) body temperature monitoring; and
7 (t) use of additional sleep-related
8 diagnostic technologies as determined by a rule adopted by the
9 board;

10 (2) observing and monitoring physical signs
11 and symptoms, general behavior and general physical response to
12 polysomnographic evaluation or treatment and determining
13 whether initiation, modification or discontinuation of a
14 treatment regimen is warranted;

15 (3) analyzing and scoring data collected
16 during the monitoring described in Paragraphs (1) and (2) of
17 this subsection for the purpose of assisting a licensed
18 physician in the diagnosis and treatment of sleep and wake
19 disorders that result from developmental defects, the aging
20 process, physical injury, disease or actual or anticipated
21 somatic dysfunction;

22 (4) implementing a written or verbal order
23 from a licensed physician that requires the practice of
24 polysomnography;

25 (5) educating a patient regarding the

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1 treatment regimen that assists that patient in improving the
2 patient's sleep; and

3 (6) initiating and monitoring treatment, under
4 the orders of a licensed physician, for sleep-related breathing
5 disorders by providing continuous positive airway pressure and
6 bi-level positive airway pressure devices and accessories,
7 including masks that do not extend into the trachea or attach
8 to an artificial airway, to a patient for home use, together
9 with educating the patient about the treatment and managing the
10 treatment;

11 M. "sleep-related services" means acts performed by
12 polysomnographic technicians, polysomnographic trainees,
13 polysomnographic students and other persons permitted to
14 perform these services under the Polysomnography Practice Act,
15 in a setting described in Subsection F of Section 3 of the
16 Polysomnography Practice Act, that would be considered the
17 practice of polysomnography if performed by a polysomnographic
18 technologist; and

19 N. "superintendent" means the superintendent of
20 regulation and licensing.

21 Section 3. LICENSE REQUIRED--EXCEPTIONS--PRACTICE
22 LIMITATIONS--APPLICABILITY.--

23 A. On and after July 1, 2011, a person who is
24 engaged in the practice of polysomnography must have a valid
25 polysomnographic technologist license issued by the board. It

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1 shall be unlawful for a person to engage in the practice of
2 polysomnography after that date unless the person has a valid
3 polysomnographic technologist license issued by the board.

4 B. Prior to July 1, 2011, any person who is engaged
5 in the practice of polysomnography without being licensed under
6 the Polysomnography Practice Act shall not be deemed to be in
7 violation of that act.

8 C. The following classes of persons may provide
9 sleep-related services without being licensed as a
10 polysomnographic technologist:

11 (1) a polysomnographic technician under the
12 general supervision of a licensed physician for a period of up
13 to two years from the date of the person's graduation from one
14 of the accredited programs described in Section 4 of the
15 Polysomnography Practice Act; provided that the board may grant
16 a one-time extension of up to one year beyond the original two-
17 year period;

18 (2) a polysomnographic trainee who may provide
19 sleep-related services under the direct supervision of a
20 polysomnographic technologist as a part of the trainee's
21 educational program while actively enrolled in an accredited
22 sleep technologist educational program that is accredited by
23 the American academy of sleep medicine;

24 (3) a polysomnographic student who may provide
25 uncompensated sleep-related services under the direct

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1 supervision of a polysomnographic technologist as a part of the
2 student's educational program while actively enrolled in a
3 polysomnographic educational program that is accredited by the
4 commission on accreditation of allied health education
5 programs;

6 (4) a person credentialed in one of the
7 health-related fields accepted by the board of registered
8 polysomnographic technologists who may provide sleep-related
9 services under the direct supervision of a polysomnographic
10 technologist for a period of up to one year while obtaining the
11 clinical experience necessary to be eligible to take the
12 examination given by the board of registered polysomnographic
13 technologists; and

14 (5) a respiratory care practitioner licensed
15 under the Respiratory Care Act who may provide sleep-related
16 services under the general supervision of a licensed physician
17 if the licensed respiratory care practitioner is credentialed
18 by the board of registered polysomnographic technologists.
19 Respiratory care practitioners in this class are subject to
20 disciplinary action pursuant to the Respiratory Care Act if
21 they fail to adhere to the standards established in the
22 Polysomnography Practice Act and rules adopted pursuant to that
23 act.

24 D. Before providing any sleep-related services:

25 (1) a polysomnographic technician shall obtain

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1 a temporary permit from the board and when providing services
2 shall wear a badge that appropriately identifies the person as
3 a polysomnographic technician;

4 (2) a polysomnographic trainee shall give
5 notice to the board that the trainee is enrolled in an
6 accredited sleep technologist educational program accredited by
7 the American academy of sleep medicine. When providing
8 services, the trainee shall wear a badge that appropriately
9 identifies the person as a polysomnographic trainee;

10 (3) a person who is obtaining clinical
11 experience pursuant to Paragraph (4) of Subsection C of this
12 section shall give notice to the board that the person is
13 working under the direct supervision of a polysomnographic
14 technologist in order to gain the experience to be eligible to
15 take the examination given by the board of registered
16 polysomnographic technologists. When providing services, the
17 person shall wear a badge that appropriately identifies that
18 the person is obtaining clinical experience; and

19 (4) a polysomnographic student shall wear a
20 badge that appropriately identifies the person as a
21 polysomnographic student.

22 E. A licensed dentist shall make or direct the
23 making and use of any oral appliance used in the practice of
24 polysomnography and shall evaluate the structures of a
25 patient's oral and maxillofacial region for purposes of fitting

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1 the appliance.

2 F. The practice of polysomnography shall take place
3 only in a hospital, a stand-alone sleep laboratory or sleep
4 center or in a patient's home in accordance with a physician's
5 order; provided that the scoring of data and the education of
6 patients may take place in settings other than in a hospital,
7 sleep laboratory, sleep center or patient's home.

8 G. The Polysomnography Practice Act does not apply
9 to:

10 (1) diagnostic electroencephalograms conducted
11 in accordance with the guidelines of the American clinical
12 neurophysiology society;

13 (2) a person who is employed in the practice
14 of polysomnography by a federal government facility or agency
15 in New Mexico; or

16 (3) a person qualified as a member of a
17 recognized profession, the practice of which requires a license
18 or is regulated pursuant to the laws of New Mexico, who renders
19 services within the scope of the person's license or other
20 regulatory authority; provided that the person does not
21 represent that the person is a polysomnographic technologist.

22 Section 4. EDUCATION--PROFESSIONAL QUALIFICATIONS.--

23 A. The board may issue a polysomnographic
24 technologist license to a person if that person:

25 (1) is at least eighteen years of age;

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1 (2) meets one of the following educational
2 requirements:

3 (a) graduation from a polysomnographic
4 educational program that is accredited by the commission on
5 accreditation of allied health education programs;

6 (b) graduation from a respiratory care
7 educational program that is accredited by the commission on
8 accreditation of allied health education programs and
9 completion of the curriculum for a polysomnography certificate
10 established and accredited by the committee on accreditation
11 for respiratory care of the commission on accreditation of
12 allied health education programs;

13 (c) graduation from an
14 electroneurodiagnostic technologist educational program with a
15 polysomnographic technology track that is accredited by the
16 commission on accreditation of allied health education
17 programs; or

18 (d) successful completion of an
19 accredited sleep technologist educational program that is
20 accredited by the American academy of sleep medicine; provided,
21 however, this optional requirement shall not be available after
22 the date on which there are at least three polysomnographic
23 technologist educational programs in New Mexico that have been
24 accredited by the commission on accreditation of allied health
25 education programs for at least the two years immediately

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1 preceding that date;

2 (3) has passed the national certifying
3 examination given by the board of registered polysomnographic
4 technologists or has passed a national certifying examination
5 equivalent to the board of registered polysomnographic
6 technologists' examination as determined by a rule adopted by
7 the polysomnography practice board;

8 (4) has been credentialed by the board of
9 registered polysomnographic technologists or by another
10 national entity equivalent to the board of polysomnographic
11 technologists as determined by rule adopted by the
12 polysomnography practice board;

13 (5) has met any additional educational or
14 clinical requirements established by the board pursuant to
15 rule; and

16 (6) has met all other requirements of the
17 Polysomnography Practice Act.

18 B. A person who is engaged in the practice of
19 polysomnography on July 1, 2008 shall be eligible for a license
20 under the Polysomnography Practice Act without meeting the
21 educational requirement of Paragraph (2) of Subsection A of
22 this section, provided that the person meets the requirements
23 of Paragraphs (3) through (6) of Subsection A of this section.

24 C. The board may require a personal interview with
25 an applicant to evaluate that person's qualifications for a

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1 license.

2 Section 5. APPLICATION.--

3 A. An applicant for a license shall:

4 (1) complete and submit an application on a
5 form furnished by the board; and

6 (2) provide all of the information requested
7 by the board.

8 B. An applicant shall submit a nonrefundable
9 application fee with the application.

10 Section 6. LICENSE--CONTENTS--DISPLAY--FEES--RENEWAL.--

11 A. A license issued by the board shall contain the
12 name of the person to whom it is issued, the address of the
13 person, the date and number of the license and other
14 information the board may require. The address contained on
15 the license shall be the address where all correspondence and
16 renewal forms from the board will be sent. Any person whose
17 address changes shall, within thirty days of the change, notify
18 the board of the address change. The most recent address
19 contained in the board's records for each license holder is the
20 address deemed sufficient for purposes of service of process.

21 B. A license holder who wishes to retire from the
22 practice of polysomnography shall file with the board an
23 affidavit, in a form to be furnished by the board, stating the
24 date on which the person retired from practice and other
25 information the board may require. If that person wishes to

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1 reenter the practice of polysomnography, the person shall meet
2 requirements established by the board for license renewal.

3 C. A license holder shall display the license in
4 the office or place in which the license holder practices in a
5 location clearly visible to patients.

6 D. The board shall establish license and
7 administrative fees, but no individual fee shall exceed one
8 thousand dollars (\$1,000).

9 E. The board shall review licenses for renewal
10 annually, and all licenses to be renewed shall be renewed on
11 July 1. Applicants for license renewal shall submit:

12 (1) a renewal application on a form provided
13 by the board;

14 (2) a license renewal fee;

15 (3) proof that the applicant continues to be
16 credentialed by the board of registered polysomnographic
17 technologists; and

18 (4) proof of completion of continuing
19 education requirements.

20 Section 7. BOARD--CREATION--ORGANIZATION--PER DIEM AND
21 MILEAGE--REMOVAL.--

22 A. The "polysomnography practice board" is created
23 and is administratively attached to the department.

24 B. The board shall have the following seven
25 members, who are residents of New Mexico, appointed by the

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1 governor:

2 (1) three members who are credentialed by the
3 board of registered polysomnographic technologists; provided
4 that when the polysomnography practice board begins issuing
5 licenses, this category of board members shall be three
6 licensed polysomnographic technologists, with the then-sitting
7 members in this category being given a reasonable amount of
8 time to become licensed;

9 (2) one licensed physician who is certified in
10 sleep medicine by a national certifying body recognized by the
11 American academy of sleep medicine;

12 (3) one person who is the director of an
13 American-academy-of-sleep-medicine-accredited sleep center;

14 (4) one licensed respiratory care practitioner
15 who is also credentialed by the board of registered
16 polysomnographic technologists who shall be required to become
17 a licensed polysomnographic technologist within a reasonable
18 amount of time; and

19 (5) one member of the public who is not
20 economically or professionally associated with the health care
21 field.

22 C. Term-length conditions for appointments to the
23 board are:

24 (1) for initial appointments, two members each
25 for four-year, three-year and two-year terms and one member for

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1 a one-year term;

2 (2) for regular appointments after the initial
3 appointments, four-year terms;

4 (3) for a vacancy appointment, the balance of
5 the term; and

6 (4) for any one member, no more than two
7 terms, including an initial appointment term; provided that a
8 member shall continue to serve on the board until a replacement
9 is appointed.

10 D. The board shall elect annually a chairperson and
11 other officers as the board determines to be necessary.

12 E. The board shall meet at least twice per calendar
13 year and otherwise as often as necessary to conduct business,
14 with four members constituting a quorum and meetings subject to
15 the Open Meetings Act.

16 F. The department shall reimburse members of the
17 board as nonsalaried public officers pursuant to the Per Diem
18 and Mileage Act, and members shall receive no other
19 compensation, perquisite or allowance for their service on the
20 board.

21 G. The governor may remove from office a member of
22 the board for neglect of duties required by the Polysomnography
23 Practice Act, malfeasance in office, incompetence or
24 unprofessional conduct.

25 Section 8. BOARD--POWERS AND DUTIES.--

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1 A. The board shall have powers regarding licensing
2 of polysomnographic technologists, temporary permitting of
3 polysomnographic technicians, approval of polysomnography
4 curricula, approval of degree programs in polysomnography and
5 any other matters that are necessary to ensure the training and
6 licensing of competent polysomnographic technologists.

7 B. The board shall hold hearings and adopt rules
8 regarding:

9 (1) the licensing of polysomnographic
10 technologists, the practice of polysomnography and the minimum
11 qualifications and hours of clinical experience and standards
12 of care required for being licensed as a polysomnographic
13 technologist;

14 (2) criteria for continuing education
15 requirements;

16 (3) the manner in which records of
17 examinations and treatments shall be kept and maintained;

18 (4) professional conduct, ethics and
19 responsibility;

20 (5) disciplinary actions, including the
21 denial, suspension or revocation of or the imposition of
22 restrictions or conditions on a license, and the circumstances
23 that require disciplinary action;

24 (6) a means to provide information to all
25 polysomnographic technologists licensed in the state;

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1 (7) the inspection of the business premises of
2 a licensee when the board determines that an inspection is
3 necessary;

4 (8) the investigation of complaints against
5 licensees or persons holding themselves out as engaging in the
6 practice of polysomnography in the state;

7 (9) the publication of information for the
8 public about licensees and the practice of polysomnography in
9 the state;

10 (10) an orderly process for reinstatement of a
11 license;

12 (11) criteria for acceptance of
13 polysomnography credentials or licenses issued in other
14 jurisdictions;

15 (12) criteria for advertising or promotional
16 materials; and

17 (13) any matter necessary to implement the
18 Polysomnography Practice Act.

19 Section 9. POLYSOMNOGRAPHY FUND CREATED--USE--
20 APPROPRIATION.--

21 A. The "polysomnography fund" is created in the
22 state treasury.

23 B. All fees collected pursuant to the provisions of
24 the Polysomnography Practice Act shall be deposited with the
25 state treasurer. The state treasurer shall place the money to

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1 the credit of the fund.

2 C. Money in the fund is appropriated to the
3 department to carry out the provisions of the Polysomnography
4 Practice Act. Any unexpended or unencumbered balance remaining
5 in the fund at the end of a fiscal year shall not revert to the
6 general fund. Expenditures shall be made from the fund on
7 warrants drawn by the secretary of finance and administration
8 pursuant to vouchers signed by the superintendent.

9 Section 10. ADMINISTRATIVE HEARINGS.--Administrative
10 hearings shall be conducted pursuant to the Uniform Licensing
11 Act.

12 Section 11. OFFENSES--CRIMINAL PENALTIES.--A person who
13 engages in the practice of polysomnography without a license is
14 guilty of a misdemeanor and shall be sentenced in accordance
15 with the provisions of Section 31-19-1 NMSA 1978.

16 Section 12. VIOLATION--CIVIL PENALTIES.--The
17 superintendent may fine any person who intentionally violates
18 the provisions of the Polysomnography Practice Act a sum up to
19 one thousand dollars (\$1,000) or may suspend or revoke a
20 licensee's authority to engage in the practice of
21 polysomnography in New Mexico.

22 Section 13. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
23 The polysomnography practice board is terminated on July 1,
24 2015 pursuant to the Sunset Act. The board shall continue to
25 operate according to the Polysomnography Practice Act until

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1 July 1, 2016. Effective July 1, 2016, the Polysomnography
2 Practice Act is repealed.

3 Section 14. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2008.

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